

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

U.S. DISTRICT COURT
SAVANNAH DIV.
2016 SEP 15 AM 11:21

9/15/16
U.S. DIST. OF GA.

MARION SMITH,)
)
Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)
)

CASE NOS. CV416-150
CR407-288

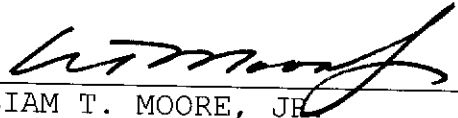
O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 5), to which objections have been filed (Doc. 7). Petitioner argues that his Hobbs Act robbery conviction does not qualify as a "crime of violence" predicate for 18 U.S.C. § 924(c) purposes; and that the conviction also does not qualify as a "crime of violence" predicate that triggers mandatory restitution under 18 U.S.C. § 3663A. (Doc. 5 at 2.) In his objections, Petitioner argues that the Magistrate Judge's reliance on In re Fleur, 824 F.3d 1337 (11th Cir. 2016) is misplaced because that case is not published. (Doc. 7 at 2.) Fleur, is a recent decision of the Eleventh Circuit Court of Appeals holding that a conviction for Hobbs Act robbery qualifies as a "crime of violence." Id. at 1340-41. Contrary to Petitioner's assertions, Fleur is a published

case. Since Fleur clearly states that Hobbs Act robbery qualifies as a "crime of violence," Petitioner's objections are without merit.

Accordingly, after a careful de novo review of the record, the report and recommendation is **ADOPTED** as the Court's opinion in this case. As a result, Petitioner's 28 U.S.C. § 2255 motion is **DENIED**. In addition, Petitioner is not entitled to a Certificate of Appealability, rendering moot any request for in forma pauperis status on appeal. The Clerk of Court is **DIRECTED** to close this case.

SO ORDERED this 15th day of September 2016.


WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA